

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

POWER INTEGRATIONS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 04-1371-JJF
	)	
FAIRCHILD SEMICONDUCTOR	)	
INTERNATIONAL, INC., and FAIRCHILD	)	
SEMICONDUCTOR CORPORATION,	)	
	)	
Defendants.	)	

**ANSWERING BRIEF IN RESPONSE TO POWER  
INTEGRATIONS' MOTION TO DE-DESIGNATE DX-483**

Defendants Fairchild Semiconductor International, Inc. and Fairchild Semiconductor Corp. (collectively, "Fairchild") oppose Power Integrations' Motion to dedesignate Fairchild's highly confidential opinion letter, DX-483 (the "Motion"). DI 469.

**I. INTRODUCTION.**

DX-483 is a highly confidential letter provided to Fairchild by its outside counsel. This letter sets forth the attorneys' opinion that Fairchild products do not infringe the '366 Patent. Power Integrations does not dispute that DX-483 (i) contains Fairchild' confidential information and (ii) was properly designated as "highly confidential" pursuant to the Court's Protective Order. Despite this, Power Integrations seeks to publicly disclose DX-483. This is improper and Power Integrations' Motion should be denied.

Power Integrations argues that Fairchild inadvertently "waived" the protections afforded its confidential information under the Protective Order since (i) DX-483 was admitted into evidence or (ii) it was "discussed" in open Court. Neither argument has merit.

First, Power Integrations now concedes that merely admitting exhibits into evidence does not strip them of their confidentiality designation. Second, even a cursory review of the

transcript cited by Power Integrations reveals that no part of DX-483 was ever read in open Court, the exhibit was never displayed to the courtroom, and the confidential subject matter was never discussed. Thus, there is no possible waiver of the protection afforded such highly confidential information under the Protective Order.

Further, Power Integrations' purported obligation to disclose the opinion letter to the United States Patent and Trademark Office is a red herring. The exhibit – and, indeed, the opinion of either parties' attorneys – is irrelevant to the reexamination of Power Integrations' patents. The Patent Office will determine the outcome of the reexamination by comparing the prior art to the Patent Office's construction of the patent's claims. DX-483 is neither prior art nor evidence of the proper claim construction and, thus, is irrelevant.

## **II. BACKGROUND.**

### **A. The Court Entered A Protective Order To Protect Confidential Information.**

On March 16, 2005, the Court entered the parties' stipulated Protective Order. DI 26. This Order facilitated discovery by allowing the parties to designate material as "Confidential" or "Highly Confidential", as appropriate. The Court specifically ordered that "Confidential Information shall be disclosed, disseminated and used by the Receiving Party only for purpose of litigation between the parties to this action." *Id.*, ¶ 2. There was no exception for ancillary proceedings before the Patent Office.

### **B. Fairchild Properly Designated DX-483 As "Highly Confidential" Pursuant To the Protective Order.**

Power Integrations instituted this action without any notice to or discussion with Fairchild. Indeed, the first Fairchild learned of Power Integrations' allegations was when it read Power Integrations' press release. As part of its investigation, Fairchild sought opinions from outside attorneys concerning the infringement and invalidity of the asserted claims. DX-483 was one such "opinion letter".

Power Integrations later amended its complaint to allege willful infringement. To rebut this allegations, Fairchild waived its attorney client privilege and produced DX-483. Fairchild,

however, never waived the confidential nature of these documents. Indeed, the letter was properly designated as “Highly Confidential”.

Power Integrations has never disputed that DX-483 (i) contains Fairchild’s confidential information and (ii) was properly designated “Highly Confidential”.

**C. The Only Reason That Power Integrations Seeks To Publish Fairchild’s Confidential Information Is Because The Patent Office Is Reexamining Power Integrations’ ‘366 Patent.**

DX-483 was produced on July 14, 2006 – over eight months ago. In all that time, Power Integrations never once suggested that the confidential information should be made public. On January 22, 2007, the Patent Office decided to reexamine the ‘366 Patent because “substantial new questions of patentability” were raised by prior art that Power Integrations had not provided to the Patent Office during the original prosecution of the ‘366 Patent. Exh A, p. 3.

In response to the Patent Office’s decision, Power Integrations suddenly demanded that Fairchild de-designate highly confidential DX-483. Power Integrations claims that this is necessary because “Power Integrations believes Fairchild’s attorney analysis of the same prior art that Fairchild relied on to request reexamination is material...” DI 471, Exh. C. Fairchild immediately replied and explained that the Patent Office had already been provided with the underlying prior art and could make its own determination.<sup>1</sup> *Id.*, Exh. D. Despite the parties’ further efforts to resolve the issue, Power Integrations filed the instant Motion.

**III. ARGUMENT.**

**A. There Is No Dispute That DX-483 Contains Fairchild’s “Highly Confidential” Information.**

Fairchild designated the documents that became DX-483 as “Highly Confidential” since they contain sensitive, non-public information. This includes details of the design and operation

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<sup>1</sup> Power Integrations suggests that “Fairchild’s request for reexamination of the ‘366 patent gives rise to an obligation that Power Integrations disclose all known information that may be material to patentability.” DI 471, Exh. C. This is perplexing. If Power Integrations truly believes that Fairchild’s attorney analysis is material information that Power Integrations must provide to the Patent Office, then Power Integrations is obligated to produce *all* of the opinion letters, not just the one letter that Power Integrations believes advances its position. Indeed, it would constitute inequitable conduct were Power Integrations merely to provide self-serving documents while failing to seek to provide other similar, admittedly “material” information.

of Fairchild's devices as well as the confidential opinions of Fairchild's attorneys. Power Integrations has never disputed that DX-483 contains confidential Fairchild information and was properly designated by Fairchild pursuant to the Protective Order. Thus, the only issue is whether Fairchild inadvertently "waived" the protection provided to such confidential documents.

**B. Power Integrations Agrees That Admitting An Exhibit Into Evidence Does Not Waive Its Confidentiality Designation.**

In its Motion, Power Integrations made the surprising argument that the mere fact that an exhibit was admitted into evidence waived the protection afforded by the Court's Protective Order. *See* Motion, p. 6 ("Fairchild' failure to object to the admission of DX-483 into evidence thus constitutes a waiver of the Highly Confidential designation, and this Court should formally de-designate the document for all purposes.")

After reviewing Power Integrations' Motion, Fairchild pointed out to Power Integrations that if this were the rule all of Power Integrations' confidential exhibits would also be de-designated since they were admitted into evidence without restriction. Exh. B. In response, Power Integrations immediately back-tracked and abandoned this argument. "It is not our position that Power Integrations waived its confidentiality designation for every exhibit admitted into evidence." Exh. C. Thus, Power Integrations now concedes that a party does not waive the confidentiality of its documents simply because they were admitted into evidence.

Indeed, were this not the case, a tremendous administrative burden would be imposed on both the Court and the parties. Presumably, parties would have to insist that virtually all of their exhibits be admitted under seal or else risk waiving their rights under the Protective Order. As Power Integrations now admits, this is not now and never has been the rule or the parties' intention.<sup>2</sup>

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<sup>2</sup> The cases cited by Power Integrations are readily distinguishable as both involved requests for documents made by organizations that are not bound by any protective order. Here, Power Integrations consented to the Protective Order and agreed to use confidential information "only for purpose of [this] litigation". DI 26, ¶ 2. Should the Court, however, determine that the admission of exhibits into evidence waives their confidentiality, Fairchild requests that the Court order that exhibits designated as "Confidential" or "Highly Confidential" by either party be admitted under seal.

**C. The Substance Of DX-483 Was Never Disclosed In Open Court.**

Thus, Power Integrations' entire argument boils down to whether or not Fairchild disclosed the confidential substance of DX-483 in open court, which Power Integrations suggests would waive any confidentiality restrictions. The record is clear – Fairchild did not do so.

Power Integrations only identifies two instances in the entire trial where DX-483 was even alluded to. Motion, p. 2. In the first, Power Integrations asked Mr. Conrad, Fairchild's reliance witness, four questions about DX-483. *See* Tr. 918:3-919:9 (for the convenience of the Court, this page and a half of transcript is attached as Exhibit D). As can be seen from the transcript, Mr. Conrad never quoted the confidential exhibit, never displayed it to the Court, and never revealed any of the confidential subject matter. Instead, he simply testified that the letter concerned non-infringement of the '366 Patent.

Power Integrations also argues that Fairchild's opinion counsel, Bob Morrill, "discussed the opinion letters in open court." Motion, p. 2. The transcript cited by Power Integrations, however, proves that this is not the case. *See* Tr. 1296-1304 (attached as Exhibit E). In this passage, Mr. Morrill simply speaks in general about the process of preparing opinion letters. He does not even identify DX-483, let alone disclose its confidential contents in "open court."

**D. DX-483 Is Irrelevant To The Patent Office's Reexamination.**

DX-483 contains Fairchild's confidential information, was properly designated as "Highly Confidential" pursuant to the Protective Order, and Fairchild never waived that protection. Thus, the Court should end the inquiry and deny Power Integrations' Motion.

DX-483 is not prior art and, thus, is not relevant to the Patent Office's reexamination of the '366 Patent. Quite frankly, the opinion of Fairchild's attorneys is of no more relevance to the Patent Office's determination than the opinion of Power Integrations' attorneys. What matters is the Patent Office's opinion on the claims and the prior art, all of which has been provided.

Indeed, the Patent Office's own rules state "prior art considered during reexamination is limited to prior art patents or printed publications...." *See* Manual of Patent Examining Procedure, § 2209. DX-483 is neither a prior art patent nor a printed publication, and is, thus,

irrelevant to the reexamination. Further, since the reexamination is an *ex parte* proceeding between Power Integrations and the Patent Office, Fairchild will have no opportunity to comment upon the DX-483 or explain it to the Patent Office.

If Power Integrations believed that Mr. Morrill's opinions were relevant to the Patent Office's determination, Power Integrations would be obligated to disclose all such opinions, including those opinions that support the Patent Office's determination that the prior art presents a substantial new question of patentability. Instead, Power Integrations self-servingly and improperly seeks to pick and choose between purportedly "material" opinion letters and provide the Patent Office with only that information that Power Integrations believes advances its position.

#### IV. CONCLUSION.

The Court should deny Power Integrations' motion and decline to strip Fairchild's highly confidential opinion letter of the protections afforded by the parties' Protective Order.

ASHBY & GEDDES

/s/ John G. Day

---

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Dated: March 30, 2007  
179345.1

# EXHIBIT A





## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/008.327	11/09/2006	6229366	10414-25	7730

7590

01/22/2007

James Y. Go  
 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP  
 12400 Wilshire Blvd.  
 Seventh Floor  
 Los Angeles, CA 90025-1026

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 01/22/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Order Granting / Denying Request For Ex Parte Reexamination</b>	Control No.	Patent Under Reexamination	
	90/008,327	6229366	
	Examiner	Art Unit	
	Margaret Rubin	3992	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The request for *ex parte* reexamination filed 09 November 2006 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) ☐ PTO-892,      b) ☒ PTO/SB/08,      c) ☐ Other: \_\_\_\_\_

1. ☒ The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the date of service of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. ☐ The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 (c) will be made to requester:

a) ☐ by Treasury check or,

b) ☐ by credit to Deposit Account No. \_\_\_\_\_, or

c) ☐ by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

Margaret Rubin  
Primary Examiner  
Art Unit: 3992

cc:Requester (if third party requester)

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 2

**DECISION GRANTING EX PARTE REEXAMINATION**

**Information Submissions**

Information Submissions in Ex Parte Proceedings are bound by 37 CFR § 1.555 which incorporates 37 CFR § 1.98(a). It appears as if Requester made typographical errors in transcribing the title of citation CB and the date of citation CC. Further, page numbers were not supplied for citations CB, CC and CD. Corrections have been made by the Office on PTO form 1449.

**Summary**

Substantial new questions of patentability affecting claims 1, 2, 8, 9, 10, 14, 16 and 18 of United States Patent No. 6,229,366 (hereafter "the base patent") are raised by the following references:

FCS1693376

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 3

- 1.) SGS-Thomson "TEA2262, Switch Mode Power Supply Controller"  
pp. 1-9 (April 1996) (hereafter, "TEA2262");
- 2.) U.S. Patent No. 4,638,417 to Martin;
- 3.) "Programmed Pulsewidth Modulated Waveforms for  
Electromagnetic Interference Mitigation in DC-DC Converters";  
IEEE Transactions on Power Electronics, Vol. 8, No.4 (October  
1993) by A.C. Wang and S.R. Sanders, pp. 596-605 (hereafter  
"Wang");
- 4.) Unitrode UCC 3800/1/2/3/4/5 biCMOS Current Mode Control  
IC's, Bill Andreyckak, pp. 9-344 - 9-361 (1994) ("U-133") and
- 5.) "Off-Line Power Integrated Circuit for International Rated  
60-watt Power Supplies" by Richard Keller, Applied Power  
Electronics Conference and Exposition, February 1992 (pp. 505-  
512) (hereafter, "Keller").

FCS1693377

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 4

### **Issues Raised by Requester**

Although the merits of the rejections suggested in the request are not decided herein, it is noted that the Requester proposes that the references supplied raise substantial new questions of patentability when viewed in the following manner:

- 1.) "Claims 1, 2, 8, 9, 10, 14, 16 and 18 are rejected under 35 U.S.C. §§102(a)(b) as anticipated by TEA2262";
- 2.) "Claims 1, 2, 8, 9, 10, 16 and 18 are rejected under 35 U.S.C. §§102(a)(b) as anticipated by Keller";
- 3.) "Claim 14 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Keller in view of Martin or, alternatively, in view of Wang"; and
- 4.) "Claims 1, 2, 8, 9, 10, 16, and 18 are rejected under 35 U.S.C. §§102(a)(b) as being anticipated U-133."

### **Background**

The base patent issued from United States Patent Application No. 09/573,081 (hereafter "the base application").

FCS1693378

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 5

The base application was allowed in the first Office action. It is noted that a statement regarding allowable subject matter mailed December 13, 2000 cited "a pulse width modulation circuit comprising a switching transistor wherein the switching transistor can be driven into a non-conducting state by a maximum duty cycle signal, a drive circuit, or a soft start circuit." It is noted that there are two independent claims within the base patent: claims 1 and 9. Neither of them include recitation of a switching transistor. In addition, claim 9 does not require a pulse width modulation circuit, or a maximum duty cycle signal. Lastly, claim 1, for instance, requires that a switch allows a signal to be transmitted between first or second terminals in accordance with a drive signal. The drive signal is provided "according to said maximum duty cycle signal" and a signal from the soft start circuit instructs the drive circuit "to disable said drive signal during at least a portion of said on-state of said maximum duty cycle." Assuming that the switch recited in claim 1 correlates with the switching transistor of the before mentioned reasons for allowance, the reasons for allowance describes different causal relationships between recited elements. In a similar fashion, the causal relationship between recited elements of claim 9 differs from the description included in the reasons for allowance.

FCS1693379

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 6

In summary, the prosecution history does not provide a clear record of the reasons the base patent was allowed.

TEA 2262

It is agreed that TEA 2262 raises an SNQ for claims 1 and 9. More particularly, Requester has provided plausible item-matching for a number of limitations of claims 1 and 9 on pages 8-12 and 15-18, respectively, of the request. In view of the fact that the prosecution history does not provide a clear record of the reasons the base patent was allowed, the teachings presented in the request cannot be judged as merely cumulative. By raising an SNQ with regard to independent claims 1 and 9, an SNQ is also raised for the dependent claims 2, 8, 10, 14, 16 and 18 which come freighted with the limitations of the claims from which they stem.

Such teachings are not cumulative to any written discussion on the record of the teachings of the prior art, were not previously considered nor addressed during a prior examination and the same question of patentability was not the subject of a final holding of invalidity by Federal Courts.

FCS1693380

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 7

Keller

It is agreed that Keller raises an SNQ for claims 1 and 9. More particularly, Requester has provided plausible item-matching for a number of limitations of claims 1 and 9 on pages 24-25 and 29-31, respectively, of the request. In view of the fact that the prosecution history does not provide a clear record of the reasons the base patent was allowed, the teachings presented in the request cannot be judged as merely cumulative. By raising an SNQ with regard to independent claims 1 and 9, an SNQ is also raised for the dependent claims 2, 8, 10, 16 and 18 which come freighted with the limitations of the claims from which they stem.

Such teachings are not cumulative to any written discussion on the record of the teachings of the prior art, were not previously considered nor addressed during a prior examination and the same question of patentability was not the subject of a final holding of invalidity by Federal Courts.

Martin and Wang

It is agreed that Martin and Wang raise an SNQ for claim 14. More particularly, Requester has provided plausible item-

FCS1693381



Application/Control Number: 90/008,327  
Art Unit: 3992

Page 8

matching for a number of limitations of claim 14 on pages 32-35, respectively, of the request. In view of the fact that the prosecution history does not provide a clear record of the reasons the base patent was allowed, the teachings presented in the request cannot be judged as merely cumulative.

Such teachings are not cumulative to any written discussion on the record of the teachings of the prior art, were not previously considered nor addressed during a prior examination and the same question of patentability was not the subject of a final holding of invalidity by Federal Courts.

U-133

It is agreed that U-133 raises an SNQ for claims 1 and 9. More particularly, Requester has provided plausible item-matching for a number of limitations of claims 1 and 9 on pages 41-42 and 44-45, respectively, of the request. In view of the fact that the prosecution history does not provide a clear record of the reasons the base patent was allowed, the teachings presented in the request cannot be judged as merely cumulative. By raising an SNQ with regard to independent claims 1 and 9, an SNQ is also raised for the dependent claims 2, 8, 10, 16, and 18

FCS1693382

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 9

which come freighted with the limitations of the claims from which they stem.

Such teachings are not cumulative to any written discussion on the record of the teachings of the prior art, were not previously considered nor addressed during a prior examination and the same question of patentability was not the subject of a final holding of invalidity by Federal Courts.

#### **Conclusion**

Since Requester did not request reexamination of claims 3-7, 11-13, 15 and 17 and did not assert the existence of a substantial new question of patentability (SNQ) for such claims, these claims will not be reexamined unless at the discretion of the Office.

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in

FCS1693383

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 10

ex parte reexamination proceedings are provided for in 37  
CFR 1.550(c).

The patent owner is reminded of the continuing  
responsibility under 37 CFR 1.565(a) to apprise the Office of  
any litigation activity, or other prior or concurrent  
proceeding, involving Patent No 6,229,366 throughout the course  
of this reexamination proceeding. The third party requester is  
also reminded of the ability to similarly apprise the Office of  
any such activity or proceeding throughout the course of this  
reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

Please mail any communications to:

Attn: Mail Stop "Ex Parte Reexam"  
Central Reexamination Unit  
Commissioner for Patents  
P. O. Box 1450  
Alexandria VA 22313-1450

Please FAX any communications to:  
(571) 273-9900  
Central Reexamination Unit

FCS1693384

Application/Control Number: 90/008,327  
Art Unit: 3992

Page 11

Please hand-deliver any communications to:

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Attn: Central Reexamination Unit  
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Alexandria, VA 22314

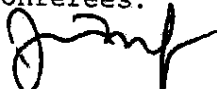

Any inquiry concerning this communication or earlier communications from the Reexamination Legal Advisor or Examiner, or as to the status of this proceeding, should be directed to the Central Reexamination Unit at telephone number (571) 272-7705.



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Margaret Rubin  
Primary Examiner  
Central Reexamination Unit 3992  
(571) 272-1756

conferees:

FCS1693385

71238 U.S. PTO  
Please type a plus sign (+) in this box ☐

Approved for use through 10/01/06  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Substitute for form 1449A/PTO

# INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet

1

of

1

Complete if Known 11/09/06

Patent Number 6,229,386  
Issue Date May 8, 2001  
First Named Inventor Balu Balakrishnan  
Group Art Unit 3992  
Examiner Name Rubin  
Attorney Docket Number

## U.S. PATENT DOCUMENTS

Examiner Initials	Cite No. <sup>1</sup>	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Patent of Cited Documents MM-DD-YYYY
		Number	Kind Code <sup>2</sup>		
MR	AA	4,638,417		Hubert C. Martin, Jr.	MM-DD-YYYY 01/20/1987
	AB				

## FOREIGN PATENT DOCUMENTS

Examiner Initials	Cite No. <sup>1</sup>	Foreign Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publications of Cited Documents MM-DD-YYYY	T <sup>3</sup>
		Office <sup>4</sup>	Number <sup>4</sup>			
	BA					

## OTHER PRIOR ART - NON PATENT LITERATURE DOCUMENTS

Examiner Initials	Cite No. <sup>1</sup>	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.		T <sup>3</sup>
MR	CA	SGS-Thompson datasheet entitled "TEA2262, Switch Mode Power supply Controller," pp. 1-9 (April 1996) ("TEA2262").		
MR	CB	R. Keller, "Power-Integrations," Off-Line Power Integrated Circuit for International Rated 60-Watt Power Supplies," (February 23-27, 1992) Keller pp 505-512		
MR	CC	"Programmed Pulsewidth Modulated Waveforms For Electromagnetic Interferences Mitigation In DC-DC Converters", IEEE Transactions on Power Electronics, Vol. 8, No. 4 (October 1993) A.C. Wang and S.R. Sanders ("Wang"). pp 596-605		
MR	CD	Unitrode UCC 3800/1/2/3/4/5 biCMOS Current Mode Control IC's (1994) ("U-133") pp 9-344 - 9-361		

Bill Andreyckak

Examiner Signature	M Rubin	Date Considered	1/3/07
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AMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 809. Draw line through citation if not in conformance and not considered. Include copy of this form with next submission to applicant.

1. Cite the designation number. 2. See attached Kinds of U.S. Patent Documents. 3. Enter Office that issued the document, by the two-letter code (WIPO Standard ST.). 4. For Japanese patent documents, indicate the year of the reign of the Emperor must precede the serial number of the patent documents. 5. Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. 6. Applicant is to place a check mark here if English language Translation is attached.

7. On Hour Statement. This form is estimated to take 2.0 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Patent Commissioner for Patents, Washington, DC 20231.

FCS1693386

# EXHIBIT B



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1000 MARSH ROAD  
MENLO PARK, CALIFORNIA 94025  
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March 16, 2007

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VIA FACSIMILE

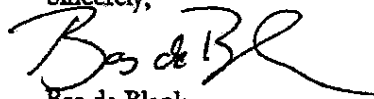
Howard G. Pollack  
Fish & Richardson P.C.  
500 Arguello Street, Suite 500  
Redwood City, CA 94063

Re: Power Integrations v. Fairchild Semiconductor et al. (CA 04-1371 JJF)

Dear Howard:

We received Power Integrations' motion to designate DX-483. In its Motion, Power Integrations argues that "the failure to object to the admission of evidence is sufficient to find the confidential nature of the information has been waived." Motion, p. 4. There were a great many exhibits admitted into evidence that purport to include Power Integrations' confidential information. Power Integrations did not object to the admission of any of these exhibits based on their allegedly confidential nature. Is it Power Integrations' position that Power Integrations has waived the confidentiality designation for every exhibit admitted into evidence?

Sincerely,



Bas de Blank

cc: William J. Marsden, Jr.  
Michael Headley

# EXHIBIT C



## FISH & RICHARDSON P.C.

Frederick P. Fish  
1855-1930

W.K. Richardson  
1859-1951

**VIA FACSIMILE & U.S. MAIL**  
650/614-7401

March 21, 2007

Bas de Blank  
Orrick, Herrington & Sutcliffe LLP  
1000 Marsh Road  
Menlo Park, CA 94025

Re: Power Integrations Inc. v. Fairchild Semiconductor Int'l  
USDC-D. Del. - C.A. No. 04-1371-JJF



AUSTIN  
BOSTON  
DALLAS  
DELAWARE  
NEW YORK  
SAN DIEGO  
SILICON VALLEY  
TWIN CITIES  
WASHINGTON, DC

Dear Bas:

I received your letter regarding the motion to de-designate Fairchild exhibit DX-483, and it is not our position that Power Integrations waived its confidentiality designation for every exhibit admitted into evidence. However, Fairchild made no effort to limit the discussion of its exhibits during trial or to clear the courtroom, thus waiving confidentiality for such exhibits. Power Integrations does not agree that the confidentiality designation was waived for its financial materials, which the parties both took steps to protect by clearing the courtroom when they were discussed in detail during trial, or for materials admitted as background without any discussion on the record.

If you have any questions in this regard, please let me know as soon as possible.

Sincerely,

Howard G. Pollack

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# EXHIBIT D

**10/4/2006 Trial Transcript**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

POWER INTEGRATIONS, INC., ) Trial Volume III  
)  
Plaintiff, )  
) C.A. No. 04-1371-JJF  
v. )  
)  
FAIRCHILD SEMICONDUCTOR )  
INTERNATIONAL, INC., and )  
FAIRCHILD SEMICONDUCTOR )  
CORPORATION, )  
)  
Defendants. )

15 Wednesday, October 4, 2006  
16 9:30 a.m.  
17 Courtroom 4B  
18 844 King Street  
19 Wilmington, Delaware

20 BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.  
21 United States District Court Judge

22      APPEARANCES:

23 FISH & RICHARDSON  
24 BY: WILLIAM J. MARSDEN, JR., ESQ.  
25 BY: FRANK E. SCHERKENBACH, ESQ.  
26 BY: HOWARD G. POLLACK, ESQ.  
27 BY: MICHAEL R. HEADLEY, ESQ.

28 Counsel for the Plaintiff

10/4/2006 Trial Transcript

1 just looked at for the '366 Patent?

2 A. Didn't change it.

3 Q. Let's look at the next opinion you got,  
4 DX-483. This is the third and last written  
5 opinion that you received on the '366 Patent;  
6 correct?

7 A. Yes.

8 Q. And this opinion did change the basis for  
9 the conclusions on the '366 Patent; right?

10 A. Yes. In the original, I have learned a  
11 new term, through this process construed, I  
12 learned the ordinary meaning of SoftStart circuit  
13 which was also present in the STS Thompson  
14 product. And later the Court determined a more  
15 specific construction of that term. So, in the  
16 former opinion, invalidity was clear because it  
17 was pre-existent. And in this opinion it was not  
18 infringement because our implementation did not  
19 include elements of that specific Power  
20 Integrations implementation. So yes, it changed  
21 from the original in the second to the third.

22 Q. You have an understanding at least as of  
23 today that the '366 Patent is about the  
24 SoftStart; right?

10/4/2006 Trial Transcript

1           A. I think that is the name of the title in  
2     it, yes.

3           Q. In this third opinion that the Sidley firm  
4     sent you, they said they didn't construe the term  
5     SoftStart circuit in their prior letters?

6           A. Because they used an ordinary meaning.  
7     SoftStart was a common meaning used by many  
8     companies, so they utilized it that way is my  
9     understanding.

10          Q. Let's go to the '075 patent. You got an  
11     opinion from the Sidley firm?

12          A. Yes.

13          Q. This is dated May 6th, 2005 to Mr. Schott  
14     on the 075?

15          A. Received it, yes.

16          Q. And the opinion says Fairchild did not  
17     infringe the '075?

18          A. Yes, the conclusion was we didn't infringe  
19     because the patent was applicable to a lateral  
20     DMOS device.

21          Q. Your takeaway from the first opinion was  
22     that Fairchild was DMOS and the patent didn't  
23     cover DMOS?

24          A. Yes, the file wrapper or prosecution

# EXHIBIT E

**10/5/2006 Trial Transcript**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

POWER INTEGRATIONS, INC., ) Trial Volume IV

)

Plaintiff, )

) C.A. No. 04-1371-JJF

v. )

)

FAIRCHILD SEMICONDUCTOR )

INTERNATIONAL, INC., and )

FAIRCHILD SEMICONDUCTOR )

CORPORATION, )

)

Defendants. )

Thursday, October 5, 2006

9:30 a.m.

Courtroom 4B

844 King Street

Wilmington, Delaware

BEFORE: THE HONORABLE JOSEPH J. FARNAN, JR.

United States District Court Judge

APPEARANCES:

FISH & RICHARDSON

BY: WILLIAM J. MARSDEN, JR., ESQ.

BY: FRANK E. SCHERKENBACH, ESQ.

BY: HOWARD G. POLLACK, ESQ.

BY: MICHAEL R. HEADLEY, ESQ.

Counsel for the Plaintiff

10/5/2006 Trial Transcript

1 Q. Now, sir, in connection with this  
2 case, you have issued a series of opinion  
3 letters?

4 A. Yes, I have.

5 Q. And we have them stacked right  
6 before you in that white binder. Would you just  
7 take a look at those and tell us what those are?

8 A. Yes. I had a look at these before  
9 I came over today, so I don't have to go through  
10 the binder. They are basically 12 opinions that  
11 I helped prepare and signed on behalf of Sidley  
12 Austin, my law firm.

13 Q. Okay. You said help prepare. Can  
14 you explain that?

15 A. Yes. Certainly every word in here  
16 is something that I believe in. But I worked  
17 with a another one of my partners at Sidley  
18 Austin, Phil Woo, in preparing these. And we --  
19 it was really a collaborative project in getting  
20 these opinions done, Phil and myself.

21 Q. Okay. Why Mr. Woo?

22 A. He has done work for Fairchild  
23 before. And, also, I really respect him as a  
24 technologist. He's actually an electrical



10/5/2006 Trial Transcript

1 engineer as well as being a lawyer, a patent  
2 lawyer.

3 So he's got technical background.  
4 It's more directly relevant to electronic  
5 circuitry than I do. I like to think I brought  
6 some, since I'm quite a bit older than Phil, I  
7 perhaps brought some age to the project, if that  
8 contributed anything.

9 Q. But ten years younger as of today;  
10 right?

11 A. Right.

12 Q. And so how does -- how did it come  
13 about that you wrote these opinions?

14 A. Fairchild requested that I get  
15 involved with Mr. Woo in writing these opinions,  
16 and I was happy to do so.

17 Q. Is Fairchild a name that was  
18 familiar to you?

19 A. Fairchild is a name I have known  
20 ever since I became aware of the semiconductor  
21 industry. They're one of the very early  
22 companies, and they're people that have left  
23 Fairchild over the years, have gone out and  
24 started many other semiconductor companies.

10/5/2006 Trial Transcript

1                   So it was the first chance I had  
2                   to work with Fairchild, and I was pleased to be  
3                   able to do so.

4                   Q. Okay. Now, sir, tell us how you  
5                   went about preparing these opinions.

6                   A. Well, we -- we had an initial  
7                   meeting with the client to really find out a bit  
8                   about the project, which patents were in issue,  
9                   what the prior art was and then Mr. Woo and I  
10                  went back to the office and started on the first  
11                  opinion.

12                  We talked about the approach that  
13                  we should use. We studied the patent, looked at  
14                  the prosecution history, which is the record of  
15                  the back and forth between the patent applicant  
16                  and the patent examiner.

17                  And one of us would take a crack  
18                  at the first draft, and then the other one would  
19                  work on that copy on the electronic copy first  
20                  of the draft. We didn't ever have hard copy.  
21                  We just passed it back and forth on the  
22                  computer.

23                  And we also periodically talk  
24                  about it. And when we -- after a period of

10/5/2006 Trial Transcript

1       probably a couple months, it would take for most  
2       of these, we would -- and we were happy with the  
3       result, we would sign it and send it off to the  
4       client.

5               Q.   Okay.  Now, you mentioned 12  
6       opinion letters.  Is that correct?

7               A.   That's correct.

8               Q.   Why so many?

9               A.   Well, there are four patents in  
10       issue in this case and initially we wrote one  
11       opinion letter for each patent.  But then those  
12       were finished about May, June time frame of  
13       2005.

14               But then there was some  
15       developments that took place.  The first one was  
16       a very important new decision that came down  
17       from the Federal Appeals Court that handles all  
18       patent appeals.  It's called the Federal  
19       Circuit.  And that was called a Philips case.

20               We knew that case was pending when  
21       we wrote the initial opinions, but we didn't  
22       know what the outcome would be.  However, we had  
23       every reason to think it would be important  
24       because the Federal Circuit had agreed to hear

10/5/2006 Trial Transcript

1 the case en banc which means instead of the  
2 normal three-judge panel, every judge in the  
3 Federal Circuit was going to have a part in  
4 hearing and writing that decision. And that  
5 decision was specifically on claim construction.

6 And, of course, in writing the  
7 opinions, we had to construe the claims. And it  
8 was thought that that was going to perhaps  
9 change the law, and it, in fact, did.

10 We put a footnote in our original  
11 opinion saying that the Philips case was under  
12 submission, and we thought we owed it to the  
13 client to go through all the opinions after the  
14 Philips case came down and consider whether  
15 there was anything in there that we ought to  
16 read.

17 Q. Okay. So you had the original  
18 four opinions, one for each patent?

19 A. Right.

20 Q. And then Philips caused how many  
21 more opinions?

22 A. Then we wrote four more opinions,  
23 one for each patent. It's much easier to keep  
24 it straight if you do it on a patent-by-patent

10/5/2006 Trial Transcript

1 basis.

2 Q. Okay, so we have four opinions in  
3 addition to those eight to make up the 12. What  
4 about the last four?

5 A. The Philips opinion was, I call, a  
6 supplemental opinion. It didn't restate  
7 everything that we had said in the first  
8 opinion. It just talked about anything that  
9 perhaps ought to be changed.

10 Then the -- then we wrote four  
11 more opinions, one for each patent. After this  
12 Court construed the claims of the patents that  
13 was about, I think the middle of 2000.

14 Well, it was earlier this year,  
15 sometime perhaps April or May of this year. And  
16 every in every patent case that gets near trial,  
17 there's claim construction. And, of course, we  
18 had construed the claims in our original  
19 opinions. We realized that we -- our  
20 construction probably wouldn't be the same as  
21 that other Court, and so once again, we felt we  
22 owed it to the client to revisit the opinions  
23 after the Court's claim construction was made  
24 and see if anything needed -- needed changing or

10/5/2006 Trial Transcript

1 discussing.

2 Q. And so did you revisit?

3 A. Oh, yeah, yes. We reconsidered.

4 We studied the claim construction very carefully  
5 and considered whether there was anything in  
6 there that didn't remain accurate, because we  
7 were sort of starting with a new set of  
8 definitions in the case.

9 Q. And did you comport with the  
10 Court's claim constructions in this third  
11 supplement?

12 A. Oh, yes, we accepted all of the  
13 claim constructions, of course, because the  
14 Court has the final say and we use those and we  
15 wrote another supplemental letter for each of  
16 the four patents at issue here.

17 Q. Now, what standards did you apply,  
18 what professional standards did you apply in  
19 writing these twelve opinion letters?

20 A. Well, writing these formal  
21 opinions is serious business in my mind. The  
22 client has to make decisions based on these,  
23 they have to decide really whether or not to  
24 stay in the business depending on our opinion.

10/5/2006 Trial Transcript

1 And so we took a lot of time, we put a lot of  
2 thought and study into it, both studying the  
3 prior art reference in the opinions, that is the  
4 developments that existed in the field before  
5 the patent application and studying the client's  
6 products. We approached them with the highest  
7 level of intensity that I possibly could, and  
8 I'm sure Mr. Woo felt the same way.

9 Q. And in preparing these opinions,  
10 how much time did you spend approximately on the  
11 whole effort?

12 A. We spent probably in the hundreds  
13 of hours. I have never added up the time, but  
14 it's way over a hundred hours, 200, 300, maybe,  
15 a lot of time.

16 Q. And do you make your living by  
17 writing these opinions?

18 A. No, I have only done this a few  
19 times before. I don't normally -- in my  
20 practice I don't write formal opinions. I give  
21 a lot of clients opinions in the course of  
22 representing them in litigation, but I don't  
23 write these sort of opinions very often at all.

24 Q. You have had your deposition taken

10/5/2006 Trial Transcript

1 in this case?

2 A. I have.

3 Q. And you have been examined on your  
4 opinions?

5 A. Yes.

6 Q. And were you taken to task on any  
7 parts of your opinions?

8 A. Clearly some of the questions  
9 implied that, implied criticism of my work, yes.  
10 I didn't take it very personally, but yes, there  
11 were negative comments made through the  
12 questions I was asked.

13 Q. And as a result of your deposition  
14 being taken and any negative comments made in  
15 the course of that deposition, have you found  
16 cause to change any of your opinions?

17 A. No.

18 MR. ANTHONY: Your Honor, I'm  
19 going to start down through the opinions now. I  
20 don't know if this is a good breaking point for  
21 the Court.

22 THE COURT: We'll break now for  
23 the evening. I'm going to ask the jury for  
24 tomorrow morning we can start at nine o'clock.